IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

LRs. of Shri Ranchhod.

vs.

Goverdhan Lal.

S.B.CIVIL SECOND APPEAL NO.189/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 9.10.2006 PASSED BY SHRI S.R. MEGHWANSHI, DISTRICT JUDGE, DUNGARPUR IN CIVIL APPEAL NO.4/2001.

DATE OF JUDGMENT ::: 17.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sanjay Mathur, for the appellant.

Mr.Mridul Jain, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

Two plaintiffs filed suit for eviction against the

defendant/appellant/tenant. Plaintiff no.1 Goverdhan Lal is alleged to be adopted son of original landlord Champalal. Champalal died and his adopted son Goverdhan Lal (plaintiff no.1) and Champalal's wife (plaintiff no.2) both filed the suit. The plaintiffs' case was that the suit premises is required for the need of the plaintiff no.1. The trial court dismissed the suit of the plaintiffs vide judgment and decree dated 9.1.2001 but the appellate court, after holding that the plaintiff no.1 is adopted son of Champalal, decided the issue of personal bonafide necessity for the suit premises in favour of the plaintiffs, decreed the suit of the plaintiffs vide judgment and decree dated 9.10.2006.

Hence, this second appeal by the defendant/ appellant/tenant.

Learned counsel for the appellant/tenant vehemently submitted that plaintiff no.1 Goverdhan Lal is Champalal's grand daughter's husband and, therefore, legally he could not have been adopted. It is submitted that plaintiff no.2, wife of original landlord, though gave statement in the Court but she has not stated about the need of the property in dispute. Learned counsel for the appellant could not point out any provision of law by which the adoption of the plaintiff no.1 was prohibited. Be it as it may be, even that was

not the issue before the courts below as no such objection was raised by the defendant in the written statement and there was no issue that Champalal could not have adopted plaintiff no.1.

The finding of fact has been recorded by the appellate court on both the questions including the personal bonafide necessity of the plaintiff of the suit premises on the basis of proper appreciation of evidence.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellant prayed that sufficient time may be given to the appellant to vacate the suit premises.

Learned counsel for the respondent has serious objection to the grant of time to the appellant.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case, this Court is of the view that the appellant be granted time upto 31.5.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 31.5.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, and shall also pay the rent upto 31.5.2008 in advance within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.6.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya